

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.9846 of 1996

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For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN
and
MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BABUBHAI CHANABHAI MAJITHIYA

Versus

STATE OF GUJARAT

Appearance:

MR DD VYAS for Petitioners
M/S PATEL ADVOCATES for Respondent No. 1
Ms.Hansa Punani, ASSTT GOVERNMENT PLEADER
for Respondent No. 1
MR YOGESH S LAKHANI for Respondent No. 4
NANAVATY ADVOCATES for Respondent No. 5
MR RM CHHAYA for Respondent No. 6
UNSERVED-REFUSED (N) for Respondent No. 7
MR VH DESAI for Respondent No. 8

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 20/04/99

ORAL JUDGEMENT : (Per R.K. Abichandani, J.)

The petitioners seek a direction on the State Government to quash the permission of June 19, 1996, permitting the Una Municipality to sell the lands in question and all the proceedings subsequent thereto culminating into execution of the sale deed dated June 24, 1996 by the respondents, treating them to be null and void. A prayer is also sought challenging the decree passed in Regular Civil Suit No.39 of 1994 by the learned Civil Judge (Junior Division), Una. A further direction is sought on the Government to initiate and take appropriate proceedings including filing of criminal prosecution against the persons responsible for the transaction in question.

2. We have heard the learned counsel for the petitioners at length. The grievance of the petitioners is that without any resolution being passed under the provisions of sec.65 of the Gujarat Municipalities Act, 1963, ("the Act" for brevity) the lands of the Municipality were being disposed of. Another grievance of the petitioners, voiced through their learned counsel, is that the office bearers of the Municipality are not looking after the interests of the Municipality and the valuable plots of the land were being disposed of without following proper procedure prescribed by the law.

3. Admittedly, the Collector, Junagadh, in his detailed order dated 17th October 1996, permanently suspended the action of the Municipality in exercise of powers under sec.258 of the Act. That order pertains to the disputed land. The Collector found that no resolution was passed by the Municipality for selling the lands in question and that the Government's order dated 19th June 1996 was not placed before the General Board of the Municipality and that the Chief Officer was trying to dispose of the said lands against the interests of the Municipality. There is also a reference in the order of the Collector to a Civil Suit having been filed by the Municipality in the court of learned Civil Judge (Senior Division), Veraval. Admittedly, the Municipality has filed the Civil Suit challenging the transaction in question and the first prayer therein is almost similar to the one in the present petition. That suit is pending.

4. Against the order of the Collector suspending the action of the Municipality, the State Government has been approached. The State Government, under the provisions of sec.264 of the Act, in all the matters connected with

the Act, has the same authority and control over the Collectors as in the matters of general and revenue administration. The State Government is yet to decide the present matter on merits. There is no reason for the petitioners to apprehend that the State Government will not exercise its powers in accordance with law and in a bona fide manner. It is obvious that the State Government will take into consideration the relevant provisions of law and take an appropriate decision in the matter. Since the very dispute is pending before the State Government and the question is also raised before the civil court in the context of the transaction which was made, it will not be appropriate for this Court to entertain these disputes in this petition and preempt the proceedings before other forums.

5. We, therefore, reject this petition. Rule is discharged with no order as to costs. It will be open for the petitioners to approach the concerned authority as expressed by their learned counsel and it will be for the authority concerned to consider their application or request in accordance with law. By consensus it is ordered that status quo will be maintained by both the sides in respect of the dispute involved till disposal of the proceedings by the State Government.

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